

## **REMARKS/ARGUMENT**

### **I. General Remarks.**

Claims 1-39 and 87-113 are pending in the present application.

Claims 40-86 and 114-122, which previously were withdrawn in response to a restriction requirement, are canceled herein, as requested by the Examiner. Claim 97 is also canceled herein.

Claims 1, 17, 28, 30, 87-96, and 98-113 are currently amended herein.

### **II. Preliminary Remarks Regarding the Status of Certain Rejections Instituted by the Examiner in the First Office Action Mailed November 10, 2004, But Apparently Not Maintained By the Examiner in the Second Office Action.**

In the first Office Action mailed November 10, 2004 (hereinafter, "First Office Action"), the Examiner instituted a number of rejections that Applicants answered in their Response filed February 16, 2005. However, in the Second Office Action, the Examiner failed to confirm that these rejections have been withdrawn after consideration of Applicants' arguments. Absent any indication from the Examiner that these rejections are maintained, Applicants consider the following rejections to have been withdrawn:

#### **A. Rejections of Claims 1 and 87 Pertaining to the Term "Particle Size Distribution Adjusting Agent."**

In the First Office Action, the Examiner rejected claims 1 and 87 as indefinite for failing to particularly point out and distinctly claim what is meant by the term "particle size distribution adjusting agent." *See* First Office Action, at 2.

Applicants responded to the First Office Action with arguments supporting Applicants' position that the term "particle size distribution adjusting agent" is clearly defined in the specification, is not ambiguous, and that the subject claims are sufficiently definite under 35 U.S.C. 112, 2nd paragraph. As the Examiner has not directly responded to Applicants' arguments, and does not appear to have maintained this rejection in the Second Office Action, Applicants believe this rejection to have been withdrawn. Applicants respectfully request notice of the same.

**B. Rejections of Claims 1 and 87 Pertaining to Absence of "Critical Amounts" of Each Component.**

In the First Office Action, the Examiner rejected claims 1 and 87 as indefinite for failing to provide "the critical amounts of each component in their independent claim for their invention." *See* First Office Action, at 2. Applicants responded with arguments supporting Applicants' position that 35 U.S.C. 112, 2nd paragraph does not require Applicants to recite specific amounts or concentrations for any component present in either independent claim 1 or 87. As the Examiner has not directly responded to Applicants' arguments, and does not appear to have maintained this rejection in the Second Office Action, Applicants believe this rejection to have been withdrawn. Applicants respectfully request notice of the same.

**C. Rejection of Claim 39 Pertaining to the Phrase "Selectively Activating."**

In the First Office Action, the Examiner rejected claim 39 as indefinite for use of the term "selectively activating." In their Response to First Office Action filed February 16, 2005, Applicants deleted the term "selectively" from claim 39. As the Examiner has not directly responded to Applicants' amendment of claim 39, and does not appear to have maintained this rejection in the Second Office Action, Applicants believe this rejection to have been withdrawn. Applicants respectfully request notice of the same.

**III. Remarks Regarding Rejections of Certain Claims Under 35 U.S.C. § 112, 2nd Paragraph.**

**A. Rejection of Claims 1, 28, 105 and 107 Pertaining to the Term "Desired."**

The Examiner has rejected claims 1, 28, 105 and 107 as indefinite for use of the term "desired." *See* Second Office Action, at 2. Applicants have amended the subject claims to remove the term "desired." Applicants respectfully request that this rejection be withdrawn, and earnestly solicit a timely Notice of Allowance for these claims, and claims dependent therefrom.

**B. Rejection of Claims 1 and 87 Pertaining to Absence of Recitation of Presence of a Liquid in the Composition.**

The Examiner has stated:

Claims 1 and 87 are indefinite. The composition cannot be a fluid without water or some other liquid in the composition and should be in this claim.

(Second Office Action, at 3.)

Applicants respectfully assert that 35 U.S.C. § 112, 2nd paragraph does not require Applicants to recite the presence of water or any fluid in either independent claim 1 or 87. The MPEP reflects this in Section 2173.04:

Breadth of a claim is not to be equated with indefiniteness. *In re Miller*, 441 F.2d 689, 169 USPQ 597 (CCPA 1971). If the scope of the subject matter embraced by the claims is clear, and if applicants have not otherwise indicated that they intend the invention to be of a scope different from that defined in the claims, then the claims comply with 35 U.S.C. 112, second paragraph.

(MPEP 2173.04.) Here, Applicants' claim 1 recites "a cement composition comprising a hydraulic cement, a set retarder, and a particle-size distribution-adjusting agent," while claim 87, as currently amended, recites "[a] settable well bore fluid comprising a hydraulic cement, a set retarder, an activator composition, and a particle-size distribution-adjusting agent." Applicants respectfully assert that the subject matter of these claims is clear. Recitation of the presence of water or another fluid is not necessary for the claims to be termed definite under 35 U.S.C. § 112, second paragraph. Inclusion of additional components (*e.g.*, water) is not necessary for the claims to be termed definite under 35 U.S.C. § 112, second paragraph. Applicants are not required to limit the scope of their claims to particular or preferred embodiments, and therefore need not recite additional compounds such as water in their independent claims. Applicants respectfully request that this rejection be withdrawn, and earnestly solicit a timely Notice of Allowance for these claims, and claims dependent therefrom.

**C. Rejection of Claims 1, 17, 30, 37, 93 and 109 Pertaining to the Use of a Colon.**

With respect to claims 37 and 109, the Examiner advised the removal of the colon therein in the First Office Action. In their Response filed February 16, 2005, Applicants amended these claims accordingly to delete the colon. Nonetheless, the Examiner has again advised deletion of the colon in the Second Office Action. Applicants respectfully submit that they already have deleted the colon, and that the colon is no longer present in either of claims 37 and 109. Applicants respectfully request the withdrawal of this rejection, and earnestly solicit the timely issuance of a Notice of Allowance for these claims.

With respect to claims 1, 17, 30, and 93, the Examiner advises deletion of the colons therein. Applicants have amended the subject claims accordingly, and respectfully request the withdrawal of this rejection, and earnestly solicit the timely issuance of a Notice of Allowance for these claims.

**IV. Remarks Regarding Rejections of Claims 1-39 Under 35 U.S.C. §§ 102/103.**

The Examiner has rejected claims 1-39 under 35 U.S.C. 102 (a and b) as anticipated by U.S. Patent Nos. 6,089,318 to Laramay et al (the "Laramay" reference), 6,172,147 to Abelleira et al (the "Abelleira" reference), 6,087,418 to Yamashita et al (the "Yamashita" reference), 5,016,711 to Cowan (the "Cowan '711" reference), 5,275,654 to Cowan (the "Cowan '654" reference), 5,298,070 to Cowan (the "Cowan '070" reference), collectively, the "References Cited in the First Office Action." Alternatively, the Examiner has rejected claims 1-39 under 35 U.S.C. 103 in view of the above-cited references. The Examiner also has rejected claims 1-39 under 35 U.S.C. 102 (or alternatively, under 35 U.S.C. 103), in view of twelve newly-cited references, discussed further below in part "B".

**A. The Examiner Has Not Shown that the References Cited in the First Office Action Disclose the Step of Activating a Cement Composition, as Required to Anticipate or Obviate Claims 1-39.**

Applicants respectfully point out to the Examiner that Applicants' independent claim 1, includes a limitation requiring activation of a cement composition, and that the Examiner has not shown that any of the References Cited in the First Office Action discloses the step of activating the cement composition, which is expressly required by Applicants' claim 1.

For any of the References Cited in the First Office Action to anticipate Applicants' independent claim 1 under 35 U.S.C. §102(b), the Reference must teach or suggest each and every limitation of the subject claim. MPEP § 2131. Applicants respectfully assert that none of the References Cited in the First Office Action have been shown to teach the step of activating the cement composition the step of activating the cement composition, and thus the Examiner has failed to show that any of these References teaches or suggests every element of Applicants' independent claim 1. Accordingly, Applicants respectfully submit that none of these References has been shown to anticipate Applicants' independent claim 1.

Applicants appreciate the Examiner's suggestion that Applicants should consider inserting the term "cationic polymer" into independent claim 1. (*See* Second Office Action, at 4, lines 10-15.) However, Applicants respectfully decline to do so, in view of the fact that the Examiner has failed to cite any reference showing activation of a cement composition.

Because the Examiner has not shown that any of the References Cited in the First Office Action discloses the step of activation of a cement composition, Applicants respectfully request that the rejections of claims 1-39 based upon these References be withdrawn, and respectfully request a Notice of Allowance for these claims.

**B. The References Newly-Cited in the Second Office Action Have Not Been Shown to Disclose the Step of Activating a Cement Composition, and Thus Cannot Anticipate or Obviate Claims 1-39.**

In the Second Office Action, the Examiner identified twelve newly-cited references, and asserted that claims 1-39 were anticipated under 35 U.S.C. 102, or, alternatively, obviated under 35 U.S.C. 103, by any of these references. These references are U.S. Patent No. 6,402,832 to Vijayendran ("*Vijayendran*"), U.S. Patent No. 5,112,603 to Nadolsky et al. ("*Nadolsky*"), U.S. Patent No. 4,393,939 to Smith et al. ("*Smith*"), U.S. Patent No. 3,508,407 to Booth ("*Booth*"), CN 1385388 to Lu et al. ("*Lu*"), JP2000191350 to Tabori et al. ("*Tabori*"), JP 09020536 to Tamura et al. ("*Tamura*"), JP06128001 to Mizunuma et al. ("*Mizunuma*"), JP 05043293 to Koizumi ("*Koizumi*"), JP 61256956 to Yamaguchi et al. ("*Yamaguchi*"), JP 59109663 to Takenaka Komuten Co. ("*Takenaka Co.*"), and DE 3213799 to Borchardt et al. ("*Borchardt*"), collectively, the "References Newly-Cited in the Second Office Action."

As to these References, the Examiner states:

The newly added references all teach cementing using a cationic polymer and cement (or gypsum) thus anticipating the instant invention. Even if not anticipated, overlapping ranges of amounts would have been prima facie obvious to one of ordinary skill in the art.

(Second Office Action, at 4, ll. 15-19.)

However, Applicants respectfully point out to the Examiner as a preliminary matter that Applicants' independent claim 1, includes a limitation requiring activation of a cement composition, and that the Examiner has not shown that any of the References Newly-Cited in the Second Office Action discloses the step of activating the cement composition, which is expressly required by Applicants' claim 1. For any of the References Newly-Cited in the Second Office Action to anticipate Applicants' independent claim 1 under 35 U.S.C. §102(b), the Reference must teach or suggest each and every limitation of the subject claim. MPEP § 2131. As discussed below, none of the References Newly-Cited in the Second Office Action has been shown to disclose all of the limitations required by Applicants' claim 1.

*Vijayendran* discloses an improved wallboard joint compound comprising gypsum and one or more additives, which in certain embodiments may comprise water-soluble polymers, for example. (See *Vijayendran*, Col. 2, ll. 31-38.) *Vijayendran*, however, is not concerned with subterranean cementing operations, and has not been shown by the Examiner to disclose a method of cementing in a subterranean formation. Nor has the Examiner shown that *Vijayendran* discloses a step of providing a cement composition comprising a set retarder, as required by Applicants' claim 1—indeed, such a teaching would seem to be inconsistent with *Vijayendran's* aim to provide compounds having “quicker drying times.” (*Id.*, Abstract.) Nor has *Vijayendran* been shown to disclose a step of activating a cement composition, as required by Applicants' claim 1. Finally, the Examiner has failed to show that *Vijayendran* discloses a step of placing a cement composition in a subterranean formation, as required by Applicants' claim 1. Accordingly, Applicants respectfully assert that *Vijayendran* has not been shown to anticipate or obviate Applicants' claim 1.

*Nadolsky* discloses compositions comprising smectite clays and cationic polymers that may be useful as thickening agents for aqueous systems. (See *Nadolsky*, Col. 1, ll. 5-10.) *Nadolsky*, however, is not concerned with subterranean cementing operations, and has not been shown to disclose a method of cementing, much less a method of cementing that includes a step

of activating a cement composition. Nor has *Nadolsky* been shown to disclose the placement of a cement composition in a subterranean formation, as required by Applicants' claim 1. Accordingly, Applicants respectfully assert that *Nadolsky* has not been shown to anticipate or obviate Applicants' claim 1.

*Smith* discloses "the use of certain cationic organic polymers as clay stabilizers in cement compositions to reduce the permeability damage caused by clay swelling and clay particle disintegration and migration due to invasion of the formation by fluid lost from the cement slurry." (*Smith*, Col. 1, ll. 14-18.) *Smith*, however, has not been shown to disclose a step of activating a cement composition, as required by Applicants' claim 1. Accordingly, Applicants respectfully assert that *Smith* has not been shown to anticipate or obviate Applicants' claim 1.

*Booth* discloses a process for backfilling mines by charging into a cavity an aqueous suspension of particulate mineral matter, sand, slag, a water-reactive setting agent, and a high molecular weight water-soluble polymer. (*Booth*, Abstract, and Col. 2, ll. 40-45.) *Booth*, however, has not been shown to disclose a cement composition comprising a set retarder, as required by Applicants' claim 1. Nor has *Booth* been shown to disclose a step of activating a cement composition, as required by Applicants' claim 1. Accordingly, Applicants respectfully assert that *Booth* has not been shown to anticipate or obviate Applicants' claim 1.

*Lu* discloses a method for preparing a ceramic fiber heat-insulation board that comprises an organic binder that may comprise a cationic starch. (*Lu*, Abstract.) *Lu*, however, is not concerned with subterranean cementing operations, and nowhere has been shown to disclose a method of cementing, much less a method of cementing that includes a step of activating a cement composition, as required by Applicants' claim 1. Nor has the Examiner shown that *Lu* discloses the placement of a cement composition in a subterranean formation, as required by Applicants' claim 1. Accordingly, Applicants respectfully assert that *Lu* has not been shown to anticipate or obviate Applicants' claim 1.

*Tobori* discloses a solubility-improving agent for a cement additive, which may comprise a cationic polymer. (*Tobori*, Abstract.) However, *Tobori* has not been shown to disclose a method of cementing, much less a method of cementing that includes a step of activating a cement composition, as required by Applicants' claim 1. Nor has *Tobori* been shown to disclose the placement of a cement composition in a subterranean formation, as

required by Applicants' claim 1. Accordingly, Applicants respectfully assert that *Tobori* has not been shown to anticipate or obviate Applicants' claim 1.

*Tamura* discloses an admixture for carbon fiber reinforced mortar comprising a cationic polymer. (*Tamura*, Abstract.) *Tamura*, however, is not concerned with subterranean cementing operations, and nowhere has been shown to disclose a method of cementing, much less a method of cementing that includes a step of activating a cement composition, as required by Applicants' claim 1. Nor has the Examiner shown that *Tamura* discloses the placement of a cement composition in a subterranean formation, as required by Applicants' claim 1. Accordingly, Applicants respectfully assert that *Tamura* has not been shown to anticipate or obviate Applicants' claim 1.

*Mizunuma* discloses a self-packing concrete composition comprising a cationic water-soluble polymer, which may be cationic starch or its derivative. (*Mizunuma*, Abstract.) *Mizunuma*, however, is not concerned with subterranean cementing operations, and nowhere has been shown to disclose a method of cementing, much less a method of cementing that includes a step of activating a cement composition, as required by Applicants' claim 1. Nor has the Examiner shown that *Mizunuma* discloses the placement of a cement composition in a subterranean formation, as required by Applicants' claim 1. Accordingly, Applicants respectfully assert that the Examiner has not shown that *Mizunuma* anticipates or obviates Applicants' claim 1.

*Koizumi* discloses the manufacture of fiber-reinforced cement boards. (*Koizumi*, Abstract.) *Koizumi*, however, is not concerned with subterranean cementing operations, and nowhere has been shown to disclose a method of cementing, much less a method of cementing that includes a step of activating a cement composition, as required by Applicants' claim 1. Nor has the Examiner shown that *Koizumi* discloses the placement of a cement composition in a subterranean formation, as required by Applicants' claim 1. Accordingly, Applicants respectfully assert that *Koizumi* has not been shown to anticipate or obviate Applicants' claim 1.

*Yamaguchi* discloses the manufacture of cement boards, involving mixing a variety of materials with polyacrylamide and cationic starch coagulation agents. (*Yamaguchi*, Abstract.) *Yamaguchi*, however, is not concerned with subterranean cementing operations, and nowhere has been shown to disclose a method of cementing, much less a method of cementing that includes a step of activating a cement composition, as required by Applicants' claim 1. Nor



has the Examiner shown that *Yamaguchi* discloses the placement of a cement composition in a subterranean formation, as required by Applicants' claim 1. Accordingly, Applicants respectfully assert that *Yamaguchi* has not been shown to anticipate or obviate Applicants' claim 1.

*Takenaka Co.* discloses spray coating of concretes, involving mixing an aqueous solution comprising cationic polymers with concrete "to decrease the rebound and dust formation during spray coating." (*Takenaka Co.*, Abstract.) *Takenaka Co.*, however, is not concerned with subterranean cementing operations. The Examiner has not shown that *Takenaka Co.* discloses a method of cementing, much less a method of cementing that includes a step of activating a cement composition, as required by Applicants' claim 1. Nor has *Takenaka Co.* been shown to disclose the placement of a cement composition in a subterranean formation, as required by Applicants' claim 1. Accordingly, Applicants respectfully assert that the Examiner has not shown *Takenaka Co.* to anticipate or obviate Applicants' claim 1.

Because none of the References Newly-Cited in the Second Office Action have been shown to disclose or suggest all the limitations of Applicants independent claim 1, Applicants respectfully request that the rejections of claims 1-39 based upon these References be withdrawn, and respectfully request a Notice of Allowance for these claims.

**V. Remarks Regarding Rejections of Claims 87-113 Under 35 U.S.C. §§ 102/103.**

The Examiner has rejected claims 87-113 under 35 U.S.C. 102 (a and b) as anticipated by U.S. Patent Nos. 6,089,318 to Laramay et al (the "Laramay" reference), 6,172,147 to Abelleira et al (the "Abelleira" reference), 6,087,418 to Yamashita et al (the "Yamashita" reference), 5,016,711 to Cowan (the "Cowan '711" reference), 5,275,654 to Cowan (the "Cowan '654" reference), 5,298,070 to Cowan (the "Cowan '070" reference), collectively, the "References Cited in the First Office Action." Alternatively, the Examiner has rejected claims 87-113 under 35 U.S.C. 103 in view of the above-cited references. The Examiner also has rejected claims 87-113 under 35 U.S.C. 102 (or alternatively, under 35 U.S.C. 103), in view of twelve newly-cited references, discussed further below in part "B".

**A. The Examiner Has Not Shown that Any of the References Cited in the First Office Action Discloses Settable Well Bore Fluids Comprising Activator Compositions.**

Applicants' independent claim 87 has been currently amended herein to recite that the claimed settable well bore fluid comprises an activator composition. For any of the References Cited in the First Office Action to anticipate Applicants' independent claim 87 under 35 U.S.C. §102(b), the Reference must teach or suggest each and every limitation of the subject claim. MPEP § 2131. As the Examiner has not shown that any of the References Cited in the First Office Action discloses settable well bore fluids comprising an activator composition, Applicants respectfully submit that amended independent claim 87, and the claims dependent therefrom, are novel and nonobvious over the References Cited in the First Office Action. Applicants respectfully request that the rejections of claims 87-113 based upon these References be withdrawn, and respectfully request a Notice of Allowance for these claims.

**B. The Examiner Has Not Shown that Any of the References Cited in the First Office Action Discloses Settable Well Bore Fluids Comprising Activator Compositions.**

Applicants' independent claim 87 has been currently amended herein to recite that the claimed settable fluid is a settable well bore fluid that comprises an activator composition. For any of the References Newly-Cited in the Second Office Action to anticipate Applicants' independent claim 87 under 35 U.S.C. §102(b), the Reference must teach or suggest each and every limitation of the subject claim. MPEP § 2131. As discussed below, each of the References Newly-Cited in the Second Office Action fails to disclose at least one limitation required by Applicants' amended claim 87, and thus fails to anticipate Applicants' amended claim 87.

*Vijayendran* discloses an improved wallboard joint compound comprising gypsum and one or more additives, which in certain embodiments may comprise water-soluble polymers, for example. (*See Vijayendran*, Col. 2, ll. 31-38.) The Examiner has not shown that *Vijayendran* discloses a settable well bore fluid. Nor has the Examiner shown that *Vijayendran* discloses a settable well bore fluid comprising a set retarder, as required by Applicants' amended claim 87—indeed, such a teaching would be inconsistent with *Vijayendran's* aim to provide compounds having “quicker drying times.” (*Id.*, Abstract.) Nor has the Examiner shown

*Vijayendran* to disclose an activator cement composition within the settable well bore fluid, as required by Applicants' amended claim 87. Accordingly, Applicants respectfully assert that *Vijayendran* does not anticipate or obviate Applicants' amended claim 87.

*Nadolsky* discloses compositions comprising smectite clays and cationic polymers that may be useful as thickening agents for aqueous systems. (*See Nadolsky*, Col. 1, ll. 5-10.) The Examiner has not shown that *Nadolsky* discloses a settable well bore fluid that comprises a set retarder and an activator composition, both of which are required by Applicants' amended claim 87. Accordingly, Applicants respectfully assert that *Nadolsky* does not anticipate or obviate Applicants' amended claim 87.

*Smith* discloses "the use of certain cationic organic polymers as clay stabilizers in cement compositions to reduce the permeability damage caused by clay swelling and clay particle disintegration and migration due to invasion of the formation by fluid lost from the cement slurry." (*Smith*, Col. 1, ll. 14-18.) The Examiner has not shown that *Smith* discloses a settable well bore fluid that comprises a set retarder and an activator composition, both of which are required by Applicants' amended claim 87. Accordingly, Applicants respectfully assert that *Smith* does not anticipate or obviate Applicants' amended claim 87.

*Booth* discloses a process for backfilling mines by charging into a cavity an aqueous suspension of particulate mineral matter, sand, slag, a water-reactive setting agent, and a high molecular weight water-soluble polymer. (*Booth*, Abstract, and Col. 2, ll. 40-45.) The Examiner has not shown that *Booth* discloses a settable well bore fluid that comprises a set retarder and an activator composition, both of which are required by Applicants' amended claim 87. Accordingly, Applicants respectfully assert that *Booth* does not anticipate or obviate Applicants' amended claim 87.

*Lu* discloses a method for preparing a ceramic fiber heat-insulation board that comprises an organic binder that may comprise a cationic starch. (*Lu*, Abstract.) The Examiner has not shown that *Lu* discloses a settable well bore fluid. Nor has the Examiner shown that *Lu* discloses a settable well bore fluid that comprises a set retarder and an activator composition, both of which are required by Applicants' amended claim 87. Accordingly, Accordingly, Applicants respectfully assert that *Lu* does not anticipate or obviate Applicants' amended claim 87.

*Tobori* discloses a solubility-improving agent for a cement additive, which may comprise a cationic polymer. (*Tobori*, Abstract.) The Examiner has not shown that *Tobori* discloses a settable *well bore* fluid, as required by Applicants' amended claim 87. Nor has the Examiner shown that *Tobori* discloses the presence in a settable well bore fluid of a set retarder and an activator composition, as required by Applicants' amended claim 87. Accordingly, Applicants respectfully assert that *Tobori* does not anticipate or obviate Applicants' amended claim 87.

*Tamura* discloses an admixture for carbon fiber reinforced mortar comprising a cationic polymer. (*Tamura*, Abstract.) The Examiner has not shown that *Tamura* discloses a settable *well bore* fluid, as required by Applicants' amended claim 87. Nor has the Examiner shown that *Tamura* discloses the presence in a settable well bore fluid of a set retarder and an activator composition, as required by Applicants' amended claim 87. Accordingly, Applicants respectfully assert that *Tamura* does not anticipate or obviate Applicants' amended claim 87.

*Mizunuma* discloses a self-packing concrete composition comprising a cationic water-soluble polymer, which may be cationic starch or its derivative. (*Mizunuma*, Abstract.) The Examiner has not shown that *Mizunuma* discloses a settable *well bore* fluid, as required by Applicants' amended claim 87. Nor has the Examiner shown that *Mizunuma* discloses the presence in a settable well bore fluid of a set retarder and an activator composition, as required by Applicants' amended claim 87. Accordingly, Applicants respectfully assert that *Mizunuma* does not anticipate or obviate Applicants' amended claim 87.

*Koizumi* discloses the manufacture of fiber-reinforced cement boards. (*Koizumi*, Abstract.) The Examiner has not shown that *Koizumi* discloses a settable *well bore* fluid, as required by Applicants' amended claim 87. Nor has the Examiner shown that *Koizumi* discloses the presence in a settable well bore fluid of a set retarder and an activator composition, as required by Applicants' amended claim 87. Accordingly, Applicants respectfully assert that *Koizumi* does not anticipate or obviate Applicants' amended claim 87.

*Yamaguchi* discloses the manufacture of cement boards, involving mixing a variety of materials with polyacrylamide and cationic starch coagulation agents. (*Yamaguchi*, Abstract.) The Examiner has not shown that *Yamaguchi* discloses a settable *well bore* fluid, as required by Applicants' amended claim 87. Nor has the Examiner shown that *Yamaguchi* discloses the presence in a settable well bore fluid of a set retarder and an activator composition,

as required by Applicants' amended claim 87. Accordingly, Applicants respectfully assert that *Yamaguchi* does not anticipate or obviate Applicants' amended claim 87.

*Takenaka Co.* discloses spray coating of concretes, involving mixing an aqueous solution comprising cationic polymers with concrete "to decrease the rebound and dust formation during spray coating." (*Takenaka Co.*, Abstract.) The Examiner has not shown that *Takenaka Co.* discloses a settable *well bore* fluid, as required by Applicants' amended claim 87. Nor has the Examiner shown that *Takenaka Co.* discloses the presence in a settable well bore fluid of a set retarder and an activator composition, as required by Applicants' amended claim 87. Accordingly, Applicants respectfully assert that *Takenaka Co.* does not anticipate or obviate Applicants' amended claim 87.

As the Examiner has not shown that any of the References Cited in the Second Office Action discloses settable well bore fluids comprising an activator composition, Applicants respectfully submit that amended independent claim 87, and the claims dependent therefrom, are novel and nonobvious over the References Cited in the Second Office Action. Applicants respectfully request that the rejections of these claims be withdrawn, and respectfully request a Notice of Allowance for these claims.

#### **VI. Rejections of Claims 1-39 and 87-113 for Obviousness-Type Double Patenting**

The Examiner has rejected claims 1-39 and 87-113 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 6,796,378 B2 ("*Reddy et al.*"). Applicants previously had filed a timely Terminal Disclaimer, with the appropriate fee, along with a prior Response, to overcome this rejection. In the Second Office Action, the Examiner indicated that this Terminal Disclaimer was being held in abeyance, pending evaluation by PTO personnel of the propriety of the Examiner's rejection.

In this Response, Applicants hereby withdraw the previously filed Terminal Disclaimer, and respectfully submit that independent claims 1 and 87, as currently amended, have not been shown to be obvious in view of the disclosure of *Reddy et al.*

Applicants respectfully assert that the Examiner has not shown *Reddy et al.* to obviate amended claim 1, because, *inter alia*, the Examiner has not shown *Reddy et al.* to disclose a method of cementing that comprises activating a cement composition, as required by Applicants' claim 1. Furthermore, Applicants respectfully assert that the Examiner has not

shown *Reddy et al.* to obviate amended claim 87, because, *inter alia*, the Examiner has not shown *Reddy et al.* to disclose a settable well bore fluid comprising an activator composition, as required by Applicants' claim 87.

Accordingly, Applicants hereby withdraw the previously-submitted Terminal Disclaimer as unnecessary. Applicants further request the withdrawal of the rejection against claims 1-39 and 87-113 in view of *Reddy et al.*, and earnestly solicit the timely issuance of a Notice of Allowance for these claims.